SELECTED TECHNIQUES OF CORPORATE ACQUISITION

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AMMON VINCENT ASHE

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DEDICATION

TO

MY FATHER

At a crisis in My Youth he taught me the wisdom of choice: To try and fail is at least to learn; to fail to try is to suffer the inestimable loss of what might have been.

---Chester I. Barnard

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CHAPTER I

THE AMERICAN STOCKHOLDER

The Rights of Stockholders.--As the owner of the corporation, the stockholder has certain legal rights, either common law, statutory, or contractual. In the most general terms, these rights may be classified as (a) collective rights and (b) general rights.

Collective rights of stockholders (applicable only by a vote of the stockholders).

1. To amend the character with the approval of the state of incorporation.

2. To adopt and to amend the by-laws, subject to any right of the director to do so.

3. To call and to hold meetings.

4. To elect directors.

5. To authorize: the sale of permanent assets, merger, consolidation, other major intercorporate fusion, reorganization, dissolution.[1]

General rights of the stockholder (applicable either collectively or individually).

1. To receive and to hold a stock certificate when the stock is fully paid.

2. To transfer stock at will.

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[1]Hugh Babb and Charles Martin, Business Law (New York: Barnes & Noble, Inc., 1955), p. 16.

3. To be notified to stockholder's meetings.

4. To vote at stockholder's meetings.

5. To receive dividends when and if declared.

6. To subscribe to new stock, if issued, in proportion to the amount of stock held.

7. To inspect the corporate books and records.

8. To arrest ultra vires acts of the corporation.

9. One behalf of the corporation, to resist and to defend the corporate interests against the injurious or inequitative acts of a majority or a minority.

10. To share in the residual assets, if any, upon dissolution.[1]

Voting for Directors.--Three general systems of voting are available:

1. Common law voting allows one voting for each stockholder regardless of the number of shares he holds. This is now obsolete and practically extinct.

2. Statutory voting allows one vote for each share of stock held. Under this system the holder or holders of a majority of the shares outstanding can elect all the directors.

3. Cumulative voting allows one vote for each share held times the number of directors to be elected. Under this system a person holding a majority of the shares outstanding may be able to elect only a majority of the directors. Thus, under cumulative voting, a minority group may be able to obtain representation on the board.

Stockholders are not permitted to cumulate their votes unless

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[1]J. C. Baker, Directors and Their Function (Cambridge, Mass.: Harvard University Press, 1945), p. 21.

provision has been made for such procedure. Such provision may be had, if at all, in the state constitution, statutes, charter, or by-laws, depending on the state of incorporation.

Proxies.--Moast proxies are written broadly so as to include all matters that come before the meeting. It is doubtful, however, that a proxy holder is able to vote on matters of extraordinary importance, such as a merger of dissolution unless there are specifically included. In fact, under the new rules of the Securities and Exchange Commission strict requirements are applied to the contents and solicitation of proxies.

Unless a proxy is coupled with an interest, it is always revocable until its vote has been cast.

It should be noted that a fiduciary cannot delegate his authority. Consequently an execution, administrator, or trustee cannot vote by discretionary proxy unless the instrument creating his office has specifically given him that permit or unless the statute so provide. He may, however, give a directed proxy.

Inspection of Corporate Books and Records.--Concerning this right, a general restriction applies: the stockholders' examination must be at a "reasonable" time and place, and his examination must be for a "proper" purpose. As to purpose, however, we may note the following statutory variations:

1. Some states make no requirement as to purpose, nor do they specify that examination cannot be made for an improper purpose.

2. Courts differ as to whether, under such a no-provision statute, the stockholder is entitled to make an examination for an improper purpose.

3. In some states the statutes grant the right of examination to anyone regardless of whether he is a stockholder or not. This is chiefly for the benefit of creditors.

4. Some states require that the stockholder own a certain percentage of the outstanding stock (generally 2% to 5%) and must have been a stockholder for a certain period of time.

5. Unless the statues limit or qualify the stockholders' right to examine, he still holds his common-law rights: that he may examine at a "reasonable" time and place for a "proper" purpose.

6. If the stockholder has the right of examination, he may bring his attorney, accountant, or other person or persons to aid him in interpretation or collection of data, or he may delegate the entire examination to them or to his agents.[1]

The Stockholder in Management.--During the month of May, 1947, the New York Stock Exchange splurged with heavy advertising in *Time*, *Look*, *The Saturday Evening Post*, and other magazines. The advertisement showed a table covered with hats; the denim cap of the railroad fireman, the white cap of the house painter; the derby of the stock-broker; the homburg; the widebrimmed straw of the farmer; the dashing cap of an airman and a fur neckpiece to represent the women.

The title is "Stockholders' Meeting." The advertisement says "They came from everywhere, from every income group, from every community. They are women as well as men; employees as well as executives; farmers as well

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[1] Lillian Davis, *Modern Corporate Reports to Stockholders, Employees, and the Public* (New York: Prentice-Hall, Inc., 1948), p. 31.

as businessmen. They are typical stockholders the owners of American business."[1] And it might be added, a more ineffective bunch of Americans you never did see.

The advertisement, of course, wanted to convey just the opposite impression. Corporations are owned by everyone. Wall Street is not a rich man's preserve. It is a place where Main Street U.S.A. as well as Park Avenue puts its savings, where the millions of the millionaire and the tens and twenties of the widow and the schoolteacher commingle. And the stockholders' meeting, to which the owners of a corporation go to vote on its affairs, is the social leveler. An owner is an owner, even as at the polls a voter is a voter once the curtain on the booth closes.

The implication is that stockholders have something to say about their business. When they go to the meetings, the management sits up. Actually, I shall endeavor to show in this analysis, that management is only as polite and attentive as it wants to be.

Once, in the days of small companies, the owner and the manager of a business were one and the same. The stockholder controlled the affairs of the company because he was the management. In theory and tradition, he is still the boss. In theory, he provides the capital and he hires the management. And managers of giant corporations are willing to preserve the fiction -- it is a convenience.

The fact is that the stockholder hires nobody. He is the hireling--or at least his money is.

In the days of the advertisement, when the Stock Exchange suffered

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[1]Time Magazine, March 17, 1947, p. 83.

from a sad case of giantism, L. O. Hooper, statistician and letter writer of W. E. Hutton & Co., reflected what Wall Street believed and wanted to believe when he wrote in the New York Exchange's magazine, The Exchange, the following: "No accurate census has ever been taken, but the various experts who have studied the matter are agreed that between 15 million and 16 million Americans own stocks - approximately one person out of nine and about one family out of three."[1] Hooper was under the influence of announcements by two New York Stock Exchange presidents, Charles R. Gay and Emil Schram, and they, in their way, were under his influence, too. All three were interested in emphasizing the scope and breadth of stock ownership. It became mutual hypnosis.

Keith Funston, who succeeded Schram as president of the Exchange, asked the Brookings Institution to find the facts. Brookings selected Lewis H. Kimmel, a research economist, for the task. Kimmel came forth with an estimate of 6,490,000 shareowners in 1952.

At first, Wall Street was shocked and shrunken. But then a new thought struck: only 6,500,000 people owned stock! My, we haven't begun to tap the market! The 6,500,000 estimate became a new credo, a road to expansion, a promise to salesmen. "It is a basis for the New York Stock Exchange Monthly Investment Plan which permits people to buy stocks for as little as $40.00 every three months."[2]

The number of shareowners increased steadily. "By 1956, the total was 8.6 millions; by 1959, 12.5 million. By 1962, according to the Stock

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[1] Lewis H. Kimmel, Share Ownership in the United States (Washington, D. C.: The Brookings Institution, 1952), p. 13.

[2] Ibid., p. 20.

Exchange's latest study, the number of individual shareowners in the United States had reached an impressive 17 million."[1] Kimmel's estimate has become ancient history and Hopper's expansive thinking a reality.

Millions of person who never dreamed of buying common stocks when Kimmel made his study were induced by the long, postwar bull market to try their fortunes in Wall Street. "They were converted to stock by fear of inflation, by hope of profit, by vigorous sales efforts and, in many cases, by opportunities to buy shares via company payroll deduction plans."[2] But nothing pulls people into the stock market like the stock market itself -- when prices rise.

The soar in stock ownership in recent years is also closely related to postwar prosperity.

> As family income increased, the capacity for investment income in common stocks also increased. It is no surprise to find that in addition to stock, 86 per cent of all shareholders also have savings accounts, 87 per cent have life insurance, 77 per cent own their own homes, and 56 per cent own U.S. Government Savings bonds.[3]

They are persons who know and accept the risks involved in stock ownership. They seem to know what they are doing -- as investors.

Yet as a political force, these stockholders have never measured up to their statistics. "Congressional mail from stockholders seldom is voluminous enough to support the well-reasoned briefs of high priced lower Manhattan law firms."[4] That is why demands for changes in the capital gain

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[1] The 17 Million (New York: New York Stock Exchange, 1962), p. 35.

[2] Ibid., p. 47.

[3] Ibid., pp. 53-54.

[4] David Karr, Fight for Control (New York: Ballantine Books, 1956), p. 40.

tax and the eliminating of "double taxation of dividends" have made slow progress in Congress.

The question is then raised, why is that? "Seventeen million individual shareowners are a lot of people -- almost four times the number of farmers in this country and more than the membership of the AFL-CIO."[1] Moreover, shareowners are financially influential people. In political campaigns, they are much more likely to be disbursers of largesse to both Republican and Democratic office seekers than workers or farmers. Yet, as stockholders, they do not wield as much influence as labor or farm organization. Again, why?

Stockholders are not a bloc or a group. They are an aggregate. They lack homogeneity of purpose. Farmers have a common interest. They are all in the same business -- raising crops and livestock. They want high prices for what they sell, low prices for what they buy. When it comes to putting pressure on senators and representatives in Washington, D. C., they speak the same language, though livestock, cotton, or wheat or tobacco farmers may differ in the details and the emphases.

Similarly, with a union, members have a common objective; higher wages and strong bargaining power vis-a-vis employers. They may not vote as their labor leaders advice them. But, they will vote as their economic interests dictate. This makes for a large block of votes. Workers, like farmers, wil defend their common livelihood.

Not so with stockholders. Those hats in the Stock Exchange advertisement are a confession of weakness. Stocks provide supplementary income

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[1] Ibid., p. 51

to salaries, fees, or wages. Dividends are not, except in rare cases, a stockholder's main income. For every Lewis D. Gilbert, who is willing to make a career of being a professional stockholder by guarding his own and other stockholders' interests, there are thousands of stockholders who are merely dividend collectors. They are "stockholders" only when director omit a dividend. They they wonder why it had to happen to them, ponder what to do about it, realize they can do little and pass on to other matters. Occasionally, a stockholder will write to the company even as an inate reader will write a letter to the editor. Shareholders are not stockholders. They are something else instead.

Stockholders are not indifferent to stock market fluctuations. The ups and downs of prices in Wall Street are a measure of wealth -- and this, for many persons, is a source of price, and perhaps gloat. But most stockholders are indifferent to corporations.

The persons who get along in this world, who make a success of their business or their profession, are more interested in their own work, in what has made them a success, than in policing corporation executives and safeguarding his legal rights as a stockholder. That implies that persons who have much at stake as stockholders are no more inclined to be legally exercised about it than are those with more modest holdings.

> Anyone would accept as self-evident that stock ownership would follow the income curve upward. But Kimmel wanted to establish this fact. In effect, he sorted the hats. And he found more wearers of homburgs, derbies, and fedoras among shareholders than wearers of white or striped denim caps.[1]

In 1952, Kimmels' study showed that more than 65% of all shareowning

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[1] Lewis H. Kimmel, Share Ownership in the United States (Washington, D. C.: The Brookings Institution, 1952), p. 13.

families had incomes of $45,000 or more.

The following table shows the results of the findings:

TABLE 1

DISTRIBUTION OF FAMILY INCOME RELATIVE TO INDIVIDUAL SHAREOWNERS

Family Income	Individual Shareowner Per Cent of Total
Less than $2,000	4.3
$2,000 to $3,000	5.4
$3,000 to $4,000	9.1
$4,000 to $5,000	12.8
$5,000 to $10,000	44.4
Over $10,000	24.0[1]

In a later survey, the New York Stock Exchange found much the same pattern, but headlined the statistics to substantiate its pet phrase "people's capitalism," as follows: "Two-thirds of homeowners earn under $7,500 or almost half the shareowner are in the $5,000 to $10,000 income range."[2]

Such assertions are factual. But they can also be misleading. They emphasize breadth of ownership and disregard depth of ownership. A small-town garage mechanic with an income of $5,000 a year may own 10 shares of a $10.00 stock in contrast, let us say, with a lawyer in a large city where income is $50,000 a year and who owes hundred share lots of many stocks. Each rates equally in the statistics as one shareowners, yet the lawyer is more important to the companies as a stockholder and to the brokers as a customer.

We call the American economic system a capitalistic system. Yet, for

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[1] Lewis H. Kimmel, Share Ownership in the United States (Washington, D. C.: The Brookings Institution, 1952), p. 13.

[2] *Ibid.*, p. 20.

the people at large, it is a consumeristic society, a high standard-of-living society. "The tendency of persons in the lower and rising income brackets is to save by spending to purchase homes, autos, home furnishings, on time."[1] Our great corporations thrive on this propersity to spend. "Each year we build the best car we possibly can to satisfy the customer," said Alfred P. Sloan, Jr. when he was chairman of General Motors, "and then the next year we build another to make him dissatisfied."[2]

Families with leftover income-uncommitted income are the purchasers of common stocks. They are the better-heeled families. An early sample survey by the Ford Motor Company of its shareholders supports this. "Only 11 per cent of the Ford holders reported incomes of less than $5,000; only 31 per cent reported incomes of less than $7,500. In other words 69 per cent had incomes of $7,500 or more. Four out of five purchasers of Ford stock (82 per cent) were already stockowners."[3] Yet, here was a security originally tabbed for the man in overalls.

The conclusion is that as people ascend the income ladder, the likelihood that some of their savings will spill over into the stock market increases. The data taken by the New York Stock Exchange in 1962 makes this point with great clarity. Table 2, page 12, indicates stock ownership according to income groups.

As a corollary, and as one would expect, the incidence of stock

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[1]Labor Department, Statistics of Income (Washington, D. C.: Government Printing Office, 1958), p. 13.

[2]"Portrait" Life Magazine, June 12, 1952, p. 22.

[3]New York Stock Exchange, Stockholder Data (New York, New York, 1962).

ownership improves with education. Persons with college training develop higher earning power than those who have not had such advantages -- not because they go to college but because they have what it takes to go to college: brains, energy, persistence. (Many of a non-college graduate also has these attributes and energes as well-off stockholder eventually).

TABLE 2

DISTRIBUTION OF STOCK OWNERSHIP
RELATIVE TO INCOME GROUP

Reported Household Income	Per Cent of Total in Each Income Class Who are Shareowners
Under $3,000	2.5
$3,000 to $5,000	5.8
$5,000 to $7,500	7.9
$7,500 to $10,000	12.6
$10,000 to $15,000	17.7
$15,000 to $25,000	39.3
Over $25,000	45.3[1]

Moreover, college men and women are likely to come from middle and upper income families. These would be families with stock owning bias. "The Stock Exchange's 1962 survey shows that 61 per cent of college graduates are stockowners versus only 5.2 per cent of those who did not graduate from high school."[2] Table 3, below, shows stock ownership according to educational attainment.

Finally, a close relationship exists between age and stock ownership. Young people starting a career and a family do not earn wages or salaries sufficient to put aside funds for the purchase of common stocks. As they

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[1]Securities and Exchange Commission, Survey of Stock Ownership (New York, New York), p. 84.

[2]Ibid., p. 85.

TABLE 3

DISTRIBUTION OF STOCK OWNERSHIP RELATIVE TO EDUCATIONAL ATTAINMENT

Education	Per Cent of Each Group Who are Shareowners
4 years or more of college	60.9
1-3 years of college	34.2
4 years of high school	15.8
1-3 years of high school	5.2[1]

grow older, or they become more experienced in their work, their earning power increases. Likewise, they have purchased their initial homestake -- beds, washing machines, refrigerators, automobiles, homes, and so forth. If they are of a provident turn, they have extra money. They can put it in insurance, savings bonds, savings institutions, or common stocks. The correlation between age and stock ownership is illustrated by 1962 New York Stock Exchange data.

TABLE 4

DISTRIBUTION OF AGE RELATIVE TO STOCK OWNERSHIP

Age	Per Cent of Each Group Who are Shareowners
21 - 34	7.9
35 - 44	14.9
45 - 54	22.2
55 - 64	20.6
65 and over	15.8[2]

So the pattern of the typical shareholder emerges. He tends to be a person in his late forties or early fifties. He has been successful

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[1] *Ibid.*

[2] Ibid., p. 91.

financially. And it is not too hard to guess which occupational group are most heavily committed to stocks. They are the well, guess -- the business executive.

The Stock Exchange's study shows that roughly 1 out of 3 in professional and managerial occupations own some stock. The executive is in the high salary bracket. Further, he is not afraid of common stocks. His own company is likely to be a stock corporation. He undoubtedly owns some of its stock. He may even have been given special incentives to purchase it through stock option plans. He has, in his business life, been brought up with stocks and finance. High income and a big property state in society are reciprocal. The high income helps to acquire property and property abets income.

Similarly, the professional person -- the lawyer, engineer, doctor, dentist, architect -- is a likely stockholder. This is an upper and middle income group. Earnings would be well above a comfortable subsistence. So, there would be leftover income available for investment and these are persons who by association become investment conscious. Engineers, lawyers, architects deal directly with business men and some are business men. Doctors and dentists often have business men as patients.

Next come white-collar workers and salesmen. Then comes the largest single numerical group of stockholders -- amounting to 34 % of the total -- housewives. Nonemployed housewives is the technical designator. But this is, in part, an arithmetical exaggeration. Many women are shareholders in name only. Stock may be owned jointly with husbands or registered in the wife's name for tax purposes. And it is the man of the house who has the say. He buys the stock and decides when to sell it. Only the unusual housewife reads the reports, studies the statistics, cashes the dividend checks, and sends in proxies. In most homes, that is man's work. Still, facts are facts, and nearly one out of every six housewives has stock in her name.

Retired men also are high up as stockholders -- 15 out of every 100. And then come firemen and craftmen -- one out of ten. The following table illustrates the facts:

TABLE 5

DISTRIBUTION OF OCCUPATION RELATIVE TO STOCK OWNERSHIP

Occupation	Per Cent of Each Group Who are Shareowners
Professional and Semi-Professional*	35.9
Proprietors, Managers and Officials	32.3
Clerical and Sales	23.3
Housewives and nonemployed adult females	15.1
Nonemployed adult males (including retired persons)	14.7
Craftsmen and foremen	10.6
Service workers	5.6
Operators and laborers	2.9
Farmers and farm laborers	1.4[1]

*Include architests, lawyers, engineers (and perhaps a few doctors and dentists) who are business executives.

The very dispersion of stock ownership is a partial explanation of the ineffectiveness of stockholders as stockholders. When doctors -- stockholders get together, they are far more apt to talk about operations in the incidence of cancer due to cigarette smoking, than about stock market or

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[1]Securities and Exchange Commission, Occupational Distribution of Stock Ownership (New York, New York, 1962), p. 21.

corporate policy. Housewife -- stockholder will be more interested in souffles and garbage disposals than in the movement toward corporate democracy. Few shareholders, regardless of the hats they wear, have sufficient amounts at stake to devote much time to the companies in which their money is invested.

> A comparatively small group of persons, those in the $10,000 and-up income group and the 'and-up' must be emphasized - has a major stake in common stocks. The Stock Exchange's own summary shows that 36% of the shareholders are to be found in the upper segment of the population. Those with incomes of $10,000 and more.[1]

The Survey Research Center of Michigan notes that "most share-owners have a relatively small stake in American corporations. About 4½ per cent of stock owning families estimate their stocks at less than $1,000. Another 4 per cent between $1,000 and $5,000."[2] At the other extreme, less than 2 per cent of all families have stockholdings worth more than $25,000 and at least 64 per cent of the stockholdings are in the possession of small proportion of families with more than $10,000 in income.

Although the Michigan data are subject to normal sampling errors their conclusion is unassailable; out of 17,000,000 individual shareowners, a small percentage control the bulk of all shares. These are not likely to be militant shareholders - guardians of the rights and the prerogatives of the stockholder with a capital S, which really means the small stockholder. These are not likely to be openly and positively dissatisfied with the corporate manner and morals of a social order in which they are on the top

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[1] Social Science Research Center, Share Ownership (Ann Arbor, Michigan: University of Michigan Press, 1960), p. 55.

[2] Ibid., p. 56.

of the ladder economically. Nor are they likely to have time for corporate democracy in capital letters.

American society is an active society. Recognition and prestige come from doing and not from having.

John D. Rockefeller, Jr., and his sons have become symbols of American achievement - not because of thier financial legacy, but because of their character - what they have done and are doing with their money and themselves. Noteworthy are the Rockefeller Center in New York and the judicious management of the Rockefeller Foundation.

Henry Ford II is already far better known than his father, Edsel, because of his achievement in resurrecting the Ford Motor Company from an "also-ran" in the automobile industry. It is notable that the Rockefellers and the Ford brothers are all in Who's Who, that Tommy Manville, another scion of great wealth, who had devoted his life to wedding show-girls is not. In America, a man's work, not his dividends or dolls, distinguishes him.

So it is with stockholders. The large shareholders are apt to be executives. In any case, they direct the policies of the companies. In word and indeed they represent the managerial group, not the stockholder group, or officers, they may be anxious to have liberal stock option plans for executives. These tend to dilute the equity of the great man of shareholders. Or, being large shareholders and not needing dividends, they may want to plow back most of earnings into growth, into developed. Small shareholders, especially retired people, probably would be anxious to have substantial pay-outs for living expenses.

Economic self-interest does not create a large earnest "stockholder class" in America. "In 1958, out of 5,126,000 taxpayers who reported dividend income, at least 4,600,000 or 90 per cent had salaries, wages, and other income in excess of dividends."[1] At the most, 526,000 families might have derived as much as 50 per cent of their income from stocks.[2] The great majority counted on salaries or wages to keep the installment collector away from the door.

The 10 per cent of the population which might derive a major proportion of income from dividends can be divided into two groups which are as follows:

1. The majority, often retired persons, whose dividend income doesn't have to be exceptionally large to equal or exceed receipts from pensions, interest, and part-time work. Often their total income from all sources will be less than $5,000 annually.

2. The minority, the really well-to-do only in the cases of large scale property owners, persons with incomes in excess of $100,000 annually, does dividend consistently equal or exceed other income. If you throw in the $50,000 to $100,000 income recipients, whose dividend receipts don't usually equal income from other sources, you will still add only 79,376 taxpayers.

And these $50,000 and up recipients are often owners, or large shareholders, or managers of corporations.

To many of them, their success as business men is more rewarding

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[1]Labor Department, Statistics of Income (Washington, D. C.: Government Printing Office, 1958), p. 57.

[2]Ibid.

than guarding their legal rights as stockholders. They are professional business men, professional executives, professional behind the scenes policymakers. They are seldom professional stockholders.

Many of the retired persons, including widows who derive a major portion of their income from dividends, would like to be professional stockholders. They have the financial incentive to be corporate watch-dogs. But how many of the persons in this group would be competent guardians of their rights?

A few who had been corporation officials would know how to analyze stock - option and pension plans for executives, and complicated financial statements. They would be able to ask intelligent questions at annual meetings of stockholders. However, by definition, by having been executives, they would probably be amply provided for in retirement. They might even have consulting salaries from the corporation. They would not be goaded by financial necessity to chaperon the officers of corporations in which they owned stock. Presumably, in retirement, they would prefer travel, golf, and good books to stockholders imbroglies. Moreover, they would identify with the management group, not with the opponents or the critics.

That leaves the lower-income pensioners those who have been successful, but not outstandingly successful, financially, those who may be getting by in their old age comfortably but not luxuriously. Obviously, they would be handicapped as corporate watchdogs. Retired doctors, farmers, mechanics, or engineers cannot suddenly become conversant with finance. Their activities have been in different channels. And, by the time they have reached the age of retirement, they are hardly endowed with the energy demanded by a new career - notwithstanding their money.

That is why stockholders, as stockholders, are inarticulate individually and ineffective as a group. The big stockholders are usually in the managerial group protecting their personal interests. The middlesized shareholders are preoccupied with their careers, and the retired persons are too old to develop into effective champions of their own rights. So, in administering his property, in exercising his legal prerogatives, the average stockholders today is in the position of a depositor in a bank. If he does not like what is going on - he can get out. The depositor does it by taking out his money; the stockholder - by selling his stock.

In selling his stock, the shareholder abandons his opportunity to improve management. He "includes himself out." He passes on to someone else a stock certificate he regards as faulty, something he does not want. In which case, the only check on the management is the threat that the price of the stock will decline and some intruder - may buy up the shares at a depreciated price and try to take over the company. If no such "raider" comes along, the average stockholder is left holding the bag of managers, that Wall Street says are not very good.

Stockholders, for the most part, are doctors, lawyers, executives, schoolteachers, farmers, air pilots, and house painters first; and stockholders second. They are investors, who, for the most part, do not wish to be bothered - except by the dividends.

CHAPTER II

SELECTED TECHNIQUES OF CORPORATE ACQUISITION

The Three Basic Rights.--When the dividend on stock is reduced or stops, when the stock drops sharply in price - the stockholder will suddenly take an interest in what is happening to his investment - he becomes conscious of being an owner. He wants to do something. His property, his wealth, is in danger. He wonders - what are my rights?

If he were to consult a lawyer, he would find out he has quite a few rights depending in part upon the state in which the company is incorporated. He has the right to share in the company's profits, providing the directors see fit to declare dividends. He has the right to elect directors. He has the right to receive annual reports of the company's earnings. He has the right to hold directors responsible for their acts-by lawsuit, if he wants to go that far. He also has the right to inspect the books of the corporation, to vote on mergers and consolidations, changes in the charter, and changes in the by-laws. In some states, he has first rights -- preemptive rights -- to buy new securities.

By the time the lawyer gets through, the stockholder realizes he is not lacking in rights. But if he is a small stockholder he is likely to find out that his rights are not exactly power. He will find out that rights mean different things to different stockholders.

To Robert R. Young, who took over the $2,000,000,000 New York central railroad in 1954 in a nationwide proxy fight, his rights as a stockholder were the means to get control of a company. To stockholders who follow Clarence H. Venner, who made a modest fortune in "unsettling the nerves" and plans of giant corporation in the early 1900's, rights are something to be asserted in lawsuits. To banks, insurance companies, mutual funds, and similar institutions, rights are a check on management and a means to information. And to a militant such as Lewis Gilbert, stockholder's powers are the legal powers by which the independent stockholder holds corporation officers and directors accountable to their boss, the stockholder.

But the average Joe and Jane stockholders, the Whereares" and legal trappings water down to three primary rights that he or she can exercise. They are as follows:

1. The right to vote the officers and directors, the management, out of the corporation by electing new directors - that will take a proxy fight. This was Young's way in the New York Central and that was what Louis E. Wolfson tried in 1955 with Montgomery Ward and Company.

2. The right to sue officers and directors for misuse of power, gross management, and dishonesty. This was Clarence Venner's way but oftentimes he was accused of acting not for stockholders but for himself.

3. The right to sell his stock which means throwing himself out. He resigns from the company.

What power accrues to stockholders as a result of these rights, practically and legally, which may be manifested as a means of taking over a corporation?

Essentially, the first basic right-the right to vote-provides the basis for action on the part of the stockholder. This action may take any of the following forms: 1. elimination of the present board of directors, 2. suit against the present directors, and 3. relinquishing one's own holdings for a substantial consideration.

These techniques will be delivered as used by several businessmen in corporate takeovers in subsequent paragraphs.

Elimination of Present Directors.--

> Through the instrumentality of the ballot, stockholders have effective control over management. They use this power in the election of directors and in voting upon other important issues placed before them. If management is unsatisfactory, they have the means to remove it. Where the majority of stockholders are pleased with the results, they indicate their confidence by the re-election of the nominees whom management recommends to them for the directorate.[1]

The preceding statement is credited to Harry A. Bullis, who, for many years, was highly successful president and then chairman of General Mills, Inc. It is a typical statement of a corporate executive. It idealizes the stockholder. It has limited pertinence to reality.

It would be realistic if stockholders took an active interest in their companies; if they had the capacity and energy to evaluate the performance of corporate management intelligently and critically; if they read carefully the proxy material sent to them. Mr. Bullis, himself, notes that some shareholders resent the spending of money for the purpose of keeping them informed.

Substantial professional investors - e.g. the banks, investment trusts,

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[1] Stanley W. Drucher, Corporate Democracy, A Compilation of Dictia (Charlottesville, Virginia: University of Virginia Press, 1958), pp. 88-89.

insurance companies, and well-to-do individuals or trustee - have the power to remove officers and directors. They do understand the issues. They actively analyze the earnings of companies in which they have investments.

The small stockholder, however, is in a separate lot. As the Temporary National Economic Committee of Congress pointed out in 1940 unless there is a powerful nucleus of some sort, it is practically impossible for the hundreds of thousands of scattered holders of a majority of stock of a giant corporation to get together even by proxy in order to exercise a degree of control. Moreover, the individual stockholder does not know the merits of those who contend for the control of the directorate; he has little or none of the materials which enable him to judge the results. Earnings may be good or bad also because of the competence of the officers; but may be good or bad also because of the good or bad conditions of business in general.

Thus the small stockholder is not in a position to act decisively or even to know how to act. So long as he receives satisfactory dividends or at least convincing reasons why such returns are not forthcoming the average stockholder will return proxy certificates to the existing management. Dividends are the main stream of interest, so long as they are satisfactory. That is why the ballot,as an instrument of control, is fictional. The right to vote in corporate affairs is not identical with the right to vote in politics. The right to vote implies an opposition. In politics, somebody is always ready and anxious to "throw the rascals out." But in corporate affairs, this right is usually latent. The small stockholder has to be offered a choice of candidates to exercise his right to change the management. Occasionally, but not often, he gets a choice, as in the New

York Central fight. But such opportunities to "throw the directors out" require special and unusual circumstance in individuals plus money.

Robert R. Young had an ambition to control an eastern railroad. He had become head of the Chesapeake and Ohio Railway Company in 1938 when he took over control of the Alleghany Corporation, top holding company in the disintegrating Van Sweringen empire. But he wanted still a bigger stake. He used the Chesapeake and Ohio funds to buy 800,000 shares of the New York Central's stock. Later, he arranged for the sale of the Central stock to two friends, the oil rich Clint W. Murchison and Sid W. Richardson of Texas.

Young had more than ambition. He was a millionnaire in his own right. He was chairman of the Allegheny Corporation, where assets exceeded $50,000,000 and he spent $1,308,000 of his own and Allegheny funds to win proxies. Clearly, such a struggle is above the financial compentence of the school-teacher, or doctor, or farmer who owns ten or fifty, or one hundred shares of stock in a company.

The struggle for economic power in a big company is far more costly than the struggle for a seat in the U.S. Senate. In the 1952 campaign, the highest outlay officially reported was that of the late John F. Kennedy, Democrat from Massachusetts, $234,000 of which $16,000 represented his own expenditures and $218,000 expenditures of others in his behalf. His defeated opponent, Henry Cabot Lodge, Jr., used funds -- his own and others, to a sum of nearly $160,000. Their combined outlays were less than either Young or William White deposed president of Central spent. New York Central's deposed management spent more than a half million dollars.

A proxy fight costs money because the management, at the outset, has all the advantages. The officers have the list of stockholders. They control, as the saying goes, the proxy machinery. They can send out letters to shareholders extolling their own virtures, pointing with pride to their records, and detailing the company's long and successful history. They can describe the opposition as interlopers, trying to get covetous fingers in the corporate till. And all this is done with the funds of the corporation. The management does not risk personal funds to stay in office - as the challenger often does.

Moreover, investors do not want to be disturbed. They prefer the status quo. Even in the New York Central, the numerical majority went along with White. The small stockholder did not want to make a change. John D. Rockefeller, Jr., had the same experience in 1929 in his proxy campaign to unseat Colonel Robert W. Stewart as president of Standard Oil Company of Indiana again the small shareholders were apathetic. Yet, Rockefeller campaigned on a moral issue. Stewart, called to testify in Senator Thomas J. Walsh's famous investigator of the Teapot Dome scandal, refused to answer questions about bonds which had mysteriously changed hands. Rockefeller felt that was unbecoming to and improper for the chief executive of a major industrial enterprise. Hence his determination, as a large shareholder, to oust Stewart.

In the struggle, he enlisted the services of Winthrop W. Aldrich, one of New York's financial elite who later became head of the Chase National Bank and still later U.S. Ambassador to Great Britain under President Eisenhower. Aldrich mobilized the support of the New York financial community and through it was able to throw Stewart out. Some $300,000 was spent in getting proxies. In those days, that was a respectable sum.

Rockefeller controlled, personally and through the Rockefeller Foundation, 13 per cent of Indiana Standard's stock.

"In the Central fight, Young, through his own holdings and those of Murchison and Richardson, owned 17 per cent of the shares of the Central."[1] The challengers for control of a corporation must not only be prepared to spend money in a proxy campaign but he usually must have a large stock interested.

Without a Young or a Rockefeller to make effective the stockholders' right to throw the ins out, the proxy is like a Communist ballot. There is only one slate to vote for. Nevertheless, the mere fact that the right exists, that occasionally a Young or a Rockefeller arises and is successful, is a boom to all shareholders in a political sense: No management can be complacent. No management can feel entrenched in its emoluments.

The haunting throught will rise: It happened in Standard Oil of Indiana; it happened in New York Central. It might happen here. This threat is a constant goad to pay dividends, to make the stock highly prized in the market place - in short, to make it prohibitive to be challenged successfully.

Eventually, though, the power to control management through the ballot, as Bullis put it, is limited. It takes a man with (1) money and (2) ambition to make a fight for control of a company. If he wins a proxy contest, he must be prepared to manage the company or get someone to do so,

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[1] "How Young Got the Vote," Fortune Magazine, Vol. D (August, 1954), pp. 87-88.

Only when a challenger arises can a shareholder express approval or disapproval of the management and so make his vote effective.

Shortly after World War II, an outburst of stockholders fights of which the Central and Montgomery Ward made first paper headlines, gave newspaper columnists and other writers an opportunity to indulge in blatant superficialities. "Stockholders have found their voices." "Stockholders are asserting their rights." "Stockholders democracy has burst into flower." The facts do not support such cliches.

Out of some three thousand companies whose stocks are traded in America's fourteen registered stock exchanges, only thirty-two proxy contests occurred in fiscal 1961, of which twenty were contests for outright control in other words, fights to the finish. The other twelve were for representation on the board. That is minority stockholders wanted a "say" or a "look-in" on management.

Most proxy disputes do not make the national news, often they are quiet, local affairs. "Among the contests in 1956 and 1957 were Hercules Morton Corporation, Allied International Investory, Michigan Steel Tube Products, Parkersburg Aetna Corporation, Reda Pump, United Board & Canton, Western Air Lines."[1] Sometimes proxy fights take years to mature. In 1957, an opposition slate supported by Robert R. Young and the Allegheny Corporation sought representation on the board of directors of the Missouri Pacific Railroad in the cumulative voting slate of Missouri. One anti-management director was elected out of five. This could balloon later into a full-pledged fight for control.

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[1]Louis Lois, Securities Regulation (New York: Little, Brown and Company, 1962), p. 109.

Often proxy contests are compromised. A court decree settled the bitter Fairbanks Morse fight after Robert H. Morse, Jr., president and Leopard D. Silberstein, who wanted to take over, reached a stalemate. This took the issue out of the hand of shareholders.[1] They could not vote. In a dispute in Loew's an SEC report makes this revealing observation: By negotiation, opposition was given one place on the board; no opposition solicitation was made. Again, a vote of stockholders was made unnecessary. Corporate democracy is bypassed.

Obviously, shareholder voting muscles do not get much exercise. Twelve to twenty-four fights a year out of more than three thousand elections comes to far less than one per cent. Essentially, the shareholder vote is potent only when, as, and if the opportunity—the challenger arises, which is not often.

Battle for the Century.—"On February 10, 1954, fifteen directors of the New York Central Railroad Company unanimously voted to decline Robert R. Young's offer to become their chairman."[2] The next day, Young declared war on these "powerful interests" in Wall Street, with whom, only twenty-four hours before, he was prepared to associate.

> Without benefit of a Gallup, Roper, or University of Michigan poll, Young announced he had the support of 90 per cent of the Central's shareholders on the issue of whether the owner of the properties shall prevail in management over the selfish voice of the banking clique that brought on the 1929 crash.

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[1] Ibid., p. 141.

[2] "Battle of Giants: Who'll Run the Great Central," Newsweek Magazine, Vol. XDIII (February 22, 1954), pp. 78-79.

Young considered himself an "owner." The director who chose to resist his offer were "interlopers" and included such established financers and businessmen as George Whitnery, then chairman of J. P. Morgan & Company; Percy J. Ebbott, then president of the Chase National Bank, now the Chase Manhattan; Lawrence N. Murray, president of the Mellon National Bank & Trust Company; Alexander C. Nogle, president of the First National Bank, since merged into the First National City Bank of New York; William E. Leves, for many years president and later chairman of Owens-Illinois Glass Company; Earle J. Machold, president of Niagara Mohawk Power Corp.; James A. Farley, chairman of Coca-Cola Corporation, and an experienced political campaigner; Elton Hoyt, II, senior partner in Peckard, Mather & Company, Cleveland investment and management firm in iron ore, coke & coal properties. Young picked on no patsies when he began the proxy battle for the century, the New York Central's prestige New York--to Chicago passenger train and all the wealth, tradition, and power it stands for.

Young's declaration of war came after he had told Harold S. Vanderbilt, largest stockholder in the Central board and great grandson of Commodore Cornelius Vanderbilt, grand old man of the Central, that he had been acquiring Central stock along with Allen P. Kinby, Young's longtime business associate. He also confided to Vanderbilt that he and Kinby were liquidating their holdings in C & O Railroad; so was Alleghany Corporation, of which Young was chairman and Kinby president. Such liquidation would leave them free to serve as directors of Central and participate in the management.

Once before, in early 1947, Young had made a bid for a say in Central. He controlled C & O through Alleghany. He had used C & O cash to buy enough Central stock to prompt Gustov Metzman, the president of Central, to offer him two directorships--one for himself, or chairman of C & O, one for Robert J. Bowman, or C & O president. But in May, 1948, the ICC denied Young's application to serve on the Central board. The C & O competed with the Central. Young controlled the C & O. Interlocking control would stifle or curb competition. The ICC went further. The C & O holdings of Central must be kept in an already established voting trust with an independent trustee. Young must not exercise his voting power; he must not select directors for Central. C & O could only hold Central shares as a "Simon pure" investment.

Young's interview with Vanderbilt took place in the cozy environment of Palm Beach where both had homes. They also were neighbors at Newport, Rhode Island. Young only wanted two seats on the board, he told his socialite friend. But one of these seats was to include a newly created post of chairman of the board, and the chairman was to be chief executive of the board. Young did not want to oust William White, president. White could continue as chief operating officer.

> Indeed, Young later invited White to lunch at the plush cloud Club atop the Chrysler Building, in New York, and promised that if White remained on the job, he, White, would be given an opportunity to buy Central stock at a fixed price--and only if the stock went up.[1]

White turned down the proposal. "When some are asked whether they parted friends, White answered, 'well, I didn't kiss the guy.'

The proxy campaign, the strategy of both sides quickly unfolded. White disclosed himself as the steady hard working railroad man efficient,

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[1] "No Compromise," Newsweek Magazine, Vol. XDIII (March 22, 1954), p. 79.

quiet, solid, decorous. When his public relations advisor advised: "promise the stockholder a dividend," the best White could muster was a suggestion that maybe in the next few years earnings would recover sufficiently to warrant a $2.00 dividend. He was the archetype of all Young called him a conservative banker's man.

Young had fewer inhibitions. He recalled that in the twenties the Central had paid dividends of $1.00 and $8.00 a share. He saw no reason at all why the road, under him (Young), should not regain that glory. A $10.00 a share dividend was entirely possible.

He tried to get a Vanderbilt on the board for old times' sake. Commodore Cornelius Vanderbilt had built the Central and battles with "Uncle" Daniel Drew, Jay Gould, and "Admiral" Jim Fish. But no Vanderbilt would play. He did nominate a woman, Lila Bell Acheson Wallace, president of the Federation of Women Shareholders in American Business.

> Young discovered a retired New York Central engineer, who owned 80 shares, and made him a candidate, supposedly to provide an employee point of view. And he named William P. Feeley, president of the Great Lakes Dredge & Dock Company, because, in addition to his other qualifications, he was a Catholic. When Mrs. Guss had urged White to name a woman to his slate, he said that there was no vacancy on the board a matter of fact statement that was no vote.[1]
>
> Young started out with only a slight advantage.
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> He and Kinby each owned 100,000 shares, or a total of 200,000. This was more than the Central board owned, but

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[1] "How Young Got the Votes," Fortune Magazine, Vol. D (August, 1954), p. 88.

> it was less than 3 per cent of the 6,477,410 shares outstanding. Victory depended on the decision of some 40,000 shareholders, the 'Aunt Janes,' as Young called the small independent corporate owners.[1]

Investment trusts, insurance companies, pension funds did not hold Central. Neither did banks in their investment and trust accounts. Its dividend record had been too erratic. The only big block of stock was that owned by the C & O. Young could depend on the favor of the C & O management. He had sold Allegheny's controlling stock in C & O to his friend, Cyrus S. Eaton, and had seen to it that Eaton got ensconced in the command seat. But C & O, under Interstate CC order, could not favor Young with its votes.

> Chase Manhattan Bank (then Chase National) was trustee of the stock. It possessed voting power under an ICC order. Young had hoped Chase would remain neutral and not vote the stock. But when Ebbott of the Chase voted against Young's "offer" to assume the Central chair, Young set his mind and financial resourcefulness on those 800,000 shares.[2]

John Brooks told the story in the New York magazine of how David Baird, a friend of Young and a member of the New York Stock Exchange, offered, during a talk at Palm Beach, to try to organize a syndicate to buy the stock:

> Young was delighted. But then, after two critical days, during which Baird had nothing conclusive to report, he began to get nervous. Central stock was churning around on the Stock Exchange in anticipation of the proxy fight; it had

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[1] *Ibid.*, p. 88.

[2] "Fight for the New York Central," *Business Week Magazine*, Vol. DV (March 6, 1964), p. 27.

jumped from 20 to 25. If Young couldn't arrange to have the C & O's block bought quickly, its price might be so high that no one would want to buy it.

On the third day, Young, still in Palm Beach, received a caller, an old friend of his named Don H. Carter, who was a business representative of Clint W. Murchison, the freewheeling Texas oil man and investor. In the past, acting through Carter, Murchison had found Young's promotions profitable to the extent of several million dollars. As Young recalls it, Carter came to see him about another business matter, and while they were in the middle of discussing it, the ball started rolling. Young, trying not to seem eager, asked Carter if he thought Murchison might be interested in buying the stock. Carter said that perhaps, and after telephoning to Murchison, reported to Young that Murchison did, indeed, seem interested. Young then put in a call for Walter J. Tuoby, president of C & O and Young's former subordinate there, asked him whether C & O might care to sell its Central seat at a price higher than the 200.00 or so a share the company had paid for it. Maybe, said Tuaby, if the price was $26.00.

Young was now in the bidding position common to brokers in big deals. The market price of Central stock was fluttering around 24, and because of the uncertainties of the proxy fight, it might roar or sink any moment. If it soared, Murchison would not buy, and if it sank, the C & O would not sell. Either way, the deal would be off. On Monday, the 15th, Central stock had touched 26. Young began negotiating with Murchison by telephone. He had reason to suspect that Tuohy would come down to 25 and he pointed out what a bargain the stock would be at that price. Murchison said the price was all right. He also said that he would need a partner and had one ready in the person of Sid W. Richardson, another Texan with a penchant for short-ending his given and enlarging his bank roll. But neither of the Texans liked the idea of putting up all the cash. Young thereupon undertook to raise the cash for them.

What followed is one of the strangest transaction in financial legerdemain. The price came to $20,000,000. Allegheny Corp., controlled by Young, advanced $7,500,000 on an unsecured note. Kinby, Young's associate, advanced $5,000,000 and a group of Cleveland banks advanced the rest. This last loan was secured by the stock. Nor was that all. The Texans had a "put" as option, to seel the Allegheny Corporation half their stock at the purchase price. Moreover, Richardson had a separate agreement with Kinby whereby Kinby would take the 200,000 he could not put to Allegheny. Murchison's risk was on 200,000 shares. The only possible loses, commented the New Yorker, "appeared to be Allegheny," which Young dominated with 0.7 per cent of its common stock.

This was the grand coup of the proxy battle. "White promptly charged skulduggery. He told his lawyers to argue that Young still dominated the C & O. Therefore, if Young got the Central, he would be a two railroad man, which flouted established ICC policy. But the ICC rules the stock had been properly transferred to the Texans. It could be voted.

The transaction had its embarrassments for Young. He was using other people's money and credit--Allegheny's, that is--as if it were other people's money. When a newspaperman asked Young's office what interest was being paid on the Murchison-Richardson note to Allegheny, the answer:

we are not saying at this time. Later, it was discovered to be $4\frac{1}{2}$ per cent. Allegheny was not loaded with cash. So, it, in turn, had to borrow to pay the C & O.

Nevertheless, the transaction revealed Young's wizardry. Doubtful shareholders were now convinced that Young had the Midas touch. He would promote. He could achieve his ends. Besides, he now had 1,000,000 shares in hand -- 16 per cent of the Central stock. In most companies that was control -- working control.

The struggle for votes which followed proved that politicians know their business. White knew what would appeal to bona fide investors to banks, insurance companies, managers of trust funds, university endowment funds. He made no bold pledges. He said that he was working hard to reduce costs, to improve the Central's properties and that ultimately he expected to be able to pay small but regular dividends. In the 1920's, that pitch would have paid off because the Central was an investment stock. But in 1954, approximately 45 per cent of the shares were in brokers' names. They were owned by speculators, readers - persons who were far more interested in an upward move in the market and the captive of a capital gain than in tortoiselike progress though gradual increases in earnings and dividends.

Young was the hare. His proxy statement said: Dear Fellow Shareholder: Put us to work to make your stock more valuable. We have bought stock with a present market value of 25,000,000 in the faith that we can. Young then pointed out the timidity of White -- the best he hopes for is a "possible $2.00 dividend in four or five years or a little less. If this had been our view we would not have acquired our shareholdings.

Young cited his own magic law the prices of securities of Allegheny

Corporation, Nickel Plate, C & O, Pere Marquette, Missouri Pacific, and Pittston Company, had advanced between 1938 and 1953. The dates were convenient. For 1938 was a depression year in stocks. 1953 was a bull market peak after the war. Fortune magazine editorialized on Young's convenient timing. It also pointed out that in Nickel Plate the big gain occurred after Mr. Young had sold out. But Young's blamboyant display of statistics convinced many shareholders.

Fortune's editorial was favorable to White, or rather so condemnatory of Young, that the New York Central represented and distributed it to stockholders without permission. Fortune sued and won $7,000. White regarded the money well spent, but was later to settle a lawsuit because of it.

White's campaign was one of aloof ridicule. Young was a man of promises unfulfilled. White called attention to Young's boasts and dreams to "Train Z," long on the drawing board but never on the tracks; to C & O's adoption and abandonment of a central ticket service; to Young's purchase of passenger cars in bulk and the subsequent sale of the cars to other roads at a loss; to his investment in the Greenbrief Hotel at White Sulphur Springs, which White said was losing money; to Young's suggestion that the railroads use refrigeration cars cooled mechanically instead of with ice (White said this was fantastically expensive).

> White pointed out that in 1942 Allegheny Corporation has owned 1,929,779 shares of C & O stock; that at the end of 1952, it owned only 104,854 shares. So Young controlled C & O with ownership of 1.3 per cent of the stock, even as he controlled Allegheny with less than 1 per cent of the stock.[1]

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[1] "Scramble For Votes Is On," Business Week Magazine, Vol. IV. (April 3, 1954), p. 118.

The inference is that Young talked owner-management but he would sell out after he got control if it served his purpose. Further, White pointed out that Young and Kirby, as principal officers of Allegheny Corporation, which at the time controlled Investors Diversified Services, Inc., had entered into a transaction with themselves whereby Allegheny exchange stock of Investors Diversified Services for Allegheny Series A preferred stock which they owned out of this deal, said White. Young Kirby stood to make a profit of more than $9,600,000. This statement was not challenged. It subsequently was the basis for a lawsuit and for a SEC recommendation to the ICC that Allegheny Corporation be made subject to SEC regulations under Investment Company Act. That act bars investment company officers from dealing with themselves and affiliates without SEC permission. They must prove arm's length dealings.

Stockholders were inundated with literature. Each side sent out seven mailings. The management hired Georgesen & Company, largest firm of professional proxy soliticitors, to call up shareholders and to bring in votes. Central employees also "volunteered." Young said that he would not use professional stock solicitors but later hired the firm of Keisel and Company. White supplemented the New York Central public relations staff with Robinson-Hannegan Associates to drum up pro-management sentiment. Young had his own public relations man, Thomas J. Deegan, Jr., who subsequently became a vice-president of Central and, still later, resigned to form his own firm with Central as a client.

From the start, Young emphasized that the management was using company funds to pay the expenses of the proxy fight. The present board is not entitled to have unlimited access to the treasury. In an effort to maintain themselves as directors. Young announced he had commenced suit to stop such expenditures.

At the same time, Young & Allegheny Corporation, he, Kirby, and other candidates for the board were spending their own money and energies in behalf of shareholders because we have bought over a million shares of Central stock in the full faith that under sound management it can again sell far above the present price and pay far in excess of its present dividends.

In the final swirl of proxy-getting, New York Central employees used telephones and rang doorbells in behalf of the management. Clint W. Murchison, as controlling shareholder in Icebold, Inc., office equipment firm, put its salesmen at the beck and call of Young. Also bankers and brokers, who were actively associated with either side, tried to corral votes. One Oklahoma friend of Murchison had received a list of shareholders in the slate with the request to call them up and to bring them in on Young's side.

> On May 26, a stockholder's special left the Grand Central Station, New York City, for Albany. The train was packed. Young's followers were buttons - Young at Heart, when Young arrived he was greeted with cheers and made a churchillian sign of triumph. White came along a bit later. He had a pipe in his mouth; photographers had to beseech him for a picture.[1]

They asked him, too, for the victory sign. He made it, but, as the *New Yorker* put it, "in a deprecatory, mechanical way."

The rival walked through the train electioneering. They were only two cars apart at Poughkeepsie. They were certain to meet in the aisles. But the train stopped. White got off and took the second section.

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[1]"Scramble For the Votes Is On," *Business Week Magazine*, Vol. DX (April 3, 1954), p. 120.

The stockholders' session, held in the drill shed of the Washington Avenue Armory, was more ritual than practical. The counting of proxies would take three weeks. Some shareholders, overwhelmed by attention, had signed proxies of both sides with a sense of indiscriminate power. Only the last-dated proxy would count. But letters had to plow through the mountains of forms and cancel all proxies which had been superdated.

"Flanking White on the platform were Harold S. Vanderbilt, William H. Vanderbilt, James A. Farley, and several other directors -- the largest of Young's changes of old-guardism."[1] The two men stockholders wanted most to see, the Texans for whom Young raised the money to produce hisown coup, Murchison and Richardson, weren't there.

The show went on, though there could be no results that day. White called the meeting to order. Mrs. Goss protested on a point of order. Speeches were made. Many persons tried to speak at once. "Late in the afternoon, Young announced: Shareowners I'm happy to tell you -- you have won." White protested the audacity and the presumptiousness: By what authority did Mr. Young speak? But White knew Young was right.

White had been beaten because he was the kind of person he was, the kind of person who could not conduct a campaign to appeal to speculations. Young, on the other hand, had political power. He made his pitch to the large group of traders and speculators who had bought Central for a market advance, who had not even troubled to have the Central stock transferred. They left the shares in brokers' name. The statistics bear this out.

Stock in brokers names went for Young by a two-to-one margin 1,372,000 shares to 678,000 including the 200,000 shares owned by Young and Kirby.

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[1]"Wheel-Deal in the Central," Time Magazine, Vol. DXIII (March 8, 1954), p. 89.

Even eliminating these shares, the margin in favor of Young was ten to six. White got a majority from stockholders who had registered the stock in their own names. There are persons who might be described as long-term investors -- the Aunt Janes, whom Young was "saving" but, the margin was insufficient to overcome Young's advantage in street-name stock. White had this moral satisfaction; individual stockholders voted for him nearly two to one 23,033 versus 12,522.

Young did not live up to his campaign promises. At the shareholders' meeting, he ostentatiously announced that he was voting his personal shares for cumulative voting. He did this to win the allegiance of Lewis D. Gilbert and Mrs. Goss. But when Gilbert put this in the form of a proposal on the Central proxy statement for 1955, the board of directors voted unanimously against.

Its adoption might invite some of the previous directorate and their numerous and powerful allies to seek reinstatement with no other purpose than to keep us from achieving our goals, thus justifying their own unhappy predictions of doom.

Young's fear was fanciful. The former Central directors hadn't enough stock to elect one of their number to the board. And they were unlikely to want to sit on Young's board. Further, to serve as a militant, bickering minority would be contrary to their principle of management. As heads of institutions they believed in law, order, harmony and management rule.

Again, on the matter of expenses, Young's past election performance believed his pre-election knighthood. When he began soliciting proxies he asked shareholders in big, black type this rhetrical question: Why are we spending our money and energies on your behalf?

Young went on to say that the cost of the proxy solicitation will be:

> ...borne by Allegeheny Corporation and the fifteen nominees on the basis of their average holdings of New York Central stock. But after the battle was won, he submitted a bill for $1,308,733.71 to New York Central shareholders for approval - a complete repudiation of his seeming promise.[1]

Alas, seeming it was! He had a legal escape clause. In his letter to shareholders was this stence: Whether Allegheny and the nominees will seek any reimbursement from the Central will depend on the outcome of a lawsuit.

The lawsuit was to stop the Central management from using Central funds to fight Young. Since, traditionally, corporation managements have always used the corporation treasury to solicit proxies -- it is part of the cost of operating the business and Young's suit was unlikely to succeed. Courts have upheld the right of management to spend corporation funds to keep itself in office.

Argued Mr. Young:

> If the expenses of only one side are to be so borne, it would seem not only more equitable, but more within the wishes of shareholders, that it be the expenses of the victors. Consequently, your board has been persuaded, and we believe rightly, that it would be a discouraging president to owners of other non-owner director companies for us to defray our own expenses when the benefit rebound to all Central shareholders, pro rata, just as the expenses would automatically be borne if the company defrayed them.[2]

Some New York Central stockholders were confused. Originally, they voted for Young because he showed a willingness to spend his own money; now

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[1]J. Brooks, "Great Proxy Fight," <u>New Yorker Magazine</u>, Vol. XXX (July 3, 1954), p. 28.

[2]<u>Ibid</u>.

they could not make up their minds whether Young's concern was his own pocketbook on some future unknown shareholders for whom he might be setting a discouraging precedent. And this came out at the first annual meeting of New York Central shareholders after Young's election. The New York Times account of the meeting instructively delineates the difference between Young's practice and preachment in corporate democracy. Mr. Young refused to entertain any question put to him that indicated the questioner was not in full agreement with the entire Young program. He declared at least six stockholders out of order for remarks or objections directed to the chair.

But the mass of shareholders were for Young. The resolution to reimburse was passed by a vote of 4,885,136 to 384,812. The margin is not quite so substantial as the arithmetic. The total included about 1,000,000 shares which Young, Kirby, Allegheny, and the Texans owned. But it again proves the importance and ignorance of the rank and file shareholders, the Aunt Janes.

Criticism was not confined to the New York Central family. Life magazine suggested that Young was guilty of shoddy ethics and morals in implying that he would not seek repayment. The Washington Post and the Times Herald carried an editorial suggesting that such requests for reimbursement of outlays in proxy battles should be carefully audited:

> This whole problem deserves the attention of the average citizen as well as the stockholders. What is to prevent a group of wealthy operations from recklessly spending huge sums of money to gain control of a corporation if they then are to be reimbursed by the corporation and its stockholders? This possibility opens up a new form of piracy. It is naive to say that the matter should be left to the good judgment of shareholders. It would be

> possible, of course, for New York Central stockholder, properly warned and organized, to turn down Mr. Young's request. But it would be very difficult.[1]

Shareholders do what their managements suggest unless some strong man, like Young, emerges to organize a contest against the management. A group of adventurers, anxious to take over control of a company, would be encouraged to spend freely. The more they gamble, the greater would be their chance of getting votes and control, and, therefore reimbursement. Half hearted spending might lead to defeat.

The New York Central fight emphasizes that proxy battles are not a poor man's game. Young, as noted, was enthusiastically voted $1,308,000 by Central shareholders for his and Allegheny's outlays. White, according to Young, spent $876,000. However, thanks to litigious shareholders who sued Young and to Young who sued White and the old Central board of directors, New York Central did not have to ladle out all the cash. Young, the newly chosen board of Central directors, and Allegheny Corporation settled for $300,000 in a suit demanding a return of $1,308,000. That is at the rate of 22.9 cents on the dollar. A suit against White and the old directors for misuse of Central funds was settled for $125,000 or 14.3 cents on the dollar.

The settlement by White and Central directors runs counter to the concept that company officials have a right-way, a duty-to use corporate funds to keep themselves in office. In theory, the directors were selected and elected by stockholders; in theory they selected and elected a president to run the corporation. So, presumably, in their opinion he is a good manager. Therefore, they ought to fight with all the corporation's resources,

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[1] Ibid.

a grab for control, a threat to oust him.

Under such circumstances, why would an ousted board of directors where members included officials of J. P. Morgan & Co., the Chase Manhattan Bank, numerous major corporations, and White, himself, pay off with their own money a lawsuit if they were convinced they had fulfilled their duty? The question is particularly pertinent, inasmuch as there never has been any doubt about White's ability as a railroad man. Young, himself, asked White to stay on as chief operating officer of the Central. And, after White was out of Central, he became president of the Delaware & Hudson Company, a railroad much smaller and less influential than Central, but better heeled financially and far more profitable.

The answer is to be found in a court decision handed down on July 8, 1955, long after the Central proxy fight, but right in the middle of the litigation over proxy expenses. A group of shareholders of Fairchild Engine and Airplane Corporation had sued to recover from present and former officers and directors payments by the company of expenses of both sides in a bitter and costly proxy fight. The stockholders objected not only to the reimbursement of expenses of the challenging group, which was successful and took office, but also to the use of corporate funds by the defeated management to keep itself in office. Even though the plaintiffs did not succeed, the case -- Rosenfield vs. Fairchild - could make history. The ruling of the New York Court of Appeals, in allowing the payment of expenses, was so close, four judges to three, that it raised doubts about the validity of such payment under slightly modified circumstances. How would this court, New York's highest, decide in another instance? The switch of one jurist could change the law.

The minority of three judges questioned whether expenditures, aside from sending out notices of the meeting, informing shareholders of the issues, and paying proxy solicitors to alert stockholders to their voting rights, were legal. Purely campaign expenses of a management group do not serve a corporate purpose. And one of the majority judges indicated in a separate opinion that if the plaintiff had demanded a particulatization of expenditures, proper and improper, he might have ruled out some of the managements outlays in its unsuccessful effort to stay in office. In that case, the decision would have been four to three the other way.

Confronted with this Fairchild decision, the lawyers for the old board of directors of Central were in a quandry. If they contested the suit, the attorney for the suing stockholders would demand a bill of particulars, and the court might reverse itself four to three, and disallow some of the outlays. One expenditure would certainly be questioned.

Sue the Directors.--No stockholder has the right to good management. But he has the right to honest management. He can expect officers and directors to watch over the business and property of his corporation as if it were their own. Thus, Section 408 of the Pennsylvania Business Corporation Law states: Officers and directors shall be deemed to stand a fiduciary relation to the corporation, and shall discharge the duties of their respective positions in good faith and with that diligence, care, and skill which ordinarily prudent men would exercise under similar circumstances in their personal business affairs.

The law grants officers and directors a vast latitude. They can make mistakes. They can exercise and judgment. They can lose money. They can refuse to pay dividends if they can adduce a business reason for so doing.

But they must not abuse their powers and privileges.

They must not be dishonest. They must not make profits at the expense of the corporation. They must not favor friends or relatives in business dealings to the detriment of the business. They must not pursue a dividend policy to their own ends. They must serve the stockholders and not themselves.

If they fail to do, they can be sued. But a stockholder's suit is not so easy as it used to be -- nor as profitable. Which brings us to Clarence A. Venner.

Venner died in 1933. Eleven years later - in 1944 - Governor Thomas E. Dewey, of New York signed a law which is a left-handed monument to Venner's life and work. It is designed to make it more difficult for others to do what Venner did so persistently.

The law provides that a stockholder who brings suit against officers and directors of a corporation in New York must put up a bond to pay court costs and the expenses of the defendant directors and officers unless he owns or represents $50,000 worth, or 5 per cent, of stock of any one class. Subsequently, Pennsylvania, Maryland, New Jersey, and other states adopted similar statutes. In signing the New York bill, Governor Dewey said: "A shareholder with a real grievance should have little trouble persuading enough other stockholders to join with him to meet one of these exemptions."[1] Nonetheless, the law makes it harder for stockholders to sue.

Venner was a member of the New York Stock Exchange and a man of mystery. He died leaving an estate of $700,000 after having sued more

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[1] H. Louners Rhenlanders, The Derivative Stockholders (New York: Little, Brown & Company, 1957), p. 205.

corporate titans than any other non-lawyer. Among his court antagonists were Atchison, Topeka & Santa Fe Railroad, Union Pacific Railroad, Pullman Palace Car Company, United States Steel Corporation, J. P. Morgan and Company, New York Central Railroad, Great Nothern Railway, and its powerful president, James J. Hill, the Wabash, Guaranty Trust Co., Bethlehem Steel, New York Life Insurance Co., A T & T, American Hide and Leather, and many more. To Venner, the bigger the opponent, the more lucrative the triumph.

He settled a suit against the Great Northern by selling Hill, the doughty president and no purchases, 980 shares of stock for $513,000. Venner had paid $188,587 for the shares. He received $300,000 for bonds with a face value of $30,000 by withdrawing a suit against the Union Pacific.

> He was accused of selling for $250,000 'worthless' stock in a paper railroad, the Nebraska Central, to the Chicago, Rock Island & Pacific Railway. Venner said he had spent $175,000 in projecting the Nebraska Central and it was profitable for the Rock Island to purchase the franchise even though it was never used.[1]

The above facts about his triumph are not of Venner's voluntary revealing. His own lawyer, in a suit to collect a fee, brought out the price Hill paid for the Great Northern stock. "An ICC investigator gave evidence in the Rock Island case at a government hearing."

"Venner was tall, heavy set, and always impeccably dressed in expensively tailored clothes."[2] He wore a stiff collar and his tie embellished with a pearl stickpin. He carried his glasses in a handsome silver case.

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[1] "Venner," Harpers Magazine, Vol. CDII (January, 1926), p. 166.

[2] Ibid., p. 167.

His even-gray hair and mustache carved out the impression of a purposeful man. Often he hid his identity as a litigant behind the Continental Securities Company, the General Investment Company and the New York Central Securities Corporation, which he controlled. These companies became known among lawyers of the day as Venner's "alter-egos."

When Venner was fighting American Hide & Leather Company's plan of reorganization, Lawrence Stern, a reporter on a New York paper persuaded him to grant an interview.

Venner said concerning his case with the American Hide & Leather Company that on several occasions he was rebuffed by officers of the company, when he sought information to which, as a stockholder, he was entitled. This became an issue in court. Vice Chancellor John Bentley of the Chancery Court of New Jersey, commented: It is true that Clarence H. Venner, in his first few particular, met with many obstacles and some rebuffs at the hands of the defendants officers. Some allowances must be made, however, for the weakness of human nature. I can conceive of no monster of the jungle that could (so) unsettle the nerves of a corporation director as the appearance of Mr. Venner in search of information.

When the Interborough Rapid Transit Company of New York, since merged into the NYC subway system, was in financial difficulties, Venner, as a bondholder, refused to go along with a reorganization plan approved by 96 per cent of the bondholders. He demanded the appointment of a receiver. DeLancy Necall, one of the numerous lawyers for the IRT, said in court: Venner sits here on my right and has many times in court heard me expose his litigious life. Could anything be plainer than that his action either as a stockholder, bondholder, or creditor is not for the benefit of his fellow bondholders, stockholders, and creditors but entirely for himself? The higher courts have held repeatedly that in such circumstances the court is under no obligation to embarrass a company which is trying to smooth out its affairs for the benefit of the stockholders and bondholders generally.

Later when Venner offered to withdraw his request for a receiver in the IRT case, the company's counsel immediately told the court he was taken by surprise. Venner was not withdrawing his motion at the request or suggestion of any person associated with IRT. Counsel felt compelled to make clear that Venner had not been bought off, that no deal had been made.

When Venner attempted to join in a suit already begun against the General Baking Company, the other plaintiffs withdrew. They said that they did not want to be joint plaintiffs with him.

The following suit revealed Venner's mother, Mrs. Retta Ellis, demanded that he return to her three thousands shares of Iowa Central Stock, which he had borrowed in order to sue the railroad as a shareholder. If the suit did not succeed, she said she was to get her shares back plus $750.00 for their use. If the suit succeeded, Venner could buy her stock under an option for $10,000.00.

"Venner's technique was to discover some legal flaw in a company's plan. He would try to stop a merger, a reorganization, or a plan of action. It would be more costly to hold up corporate plans to buy Venner out."[1] There is one apocryhal story: After he was well known as a bringer of "Stock suits," he help up the plans of a large company over a legalism, and was invited to talk things over with the board of directors. The board

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[1] "Manage," <u>Harpers Magazine</u>, Vol. CDII (May, 1926), p. 52.

listened to Venner, then asked him to retire briefly. When he returned, the chairman said he was authorized to offer Venner $10,000 for his stock - a sum which would have yielded him a handsome profit. Venner stood up and said: "Gentlemen, you forget that I have a reputation to uphold."

As the years went by, a common headline was, "Venner Sues New York Central," or "Venner Against J. P. Morgan," or even more revealing, as corporation found it necessary to contest his action, "Venner Loses Again."

Assessing Venner's work in behalf of stockholders is not easy. August Belmont, the banker, called him a "practical blackmailer," Venner started a suit for libel. But when Belmont confronted him with a demand to take the stand and be examined, Venner dropped the action.

Supreme Court Justice James C. Van Siclen, of New York said:

> No weight or venture can be added to the court's memorandum by indulging in envertiness or branding the plaintiff Venner ... If heretofore the judicial record and published opinions of various state and federal courts tend to establish that Venner is an antificer of litigation and a menace to corporate society, and added curse will wash no cure.[1]

But too many small stockholders and opponents of big corporation, he was a dealing and a protector. One of his admirers suggested a monument to him at Broad and Wall Streets, saying:

Sacred to the Memory of Clarence Venner - the only man who ever made money playing a line hard against the wizards of high finance. Instead, his epitaph is the law which curtails the rights of stockholders to sue.

Venner was called a nuisance, but he was also a legal Robin Hood, a

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[1] "Manage," Harper's Magazine, Vol. CDII (May, 1926), p. 52.

protector of the ignorant. By constantly challenging the proposals of companies, by demanding to have stock "appraised out" - as the expression is - in mergers, by examining every legal loophold, he kept corporation officials and lwayers alert to their obligation to security owners. They had to observe the letter as well as the spirit of their charter and by-laws, or face Venner. He was like an auditing system in business, or a policeman on a beat - a restraint on people who might be tempted. True, he would sell his nightstick - at a price. But the mere fact that he wore a coat of mail, often called black, produced higher corporate morality. He raised the level of the corporate conscience. He made such a nuisance of himself that the phrase "stock suit" is associated with his name. And laws to protect corporations from stock suits have crystallized.

Today, in New York State - and many other states - a stockholder cannot bring suit against a corporation unless he owned stock at the time of the alleged wrongdoing. The stockholder cannot buy into a suit, be a corporate ambulance chaser, or, to use the legal terminology, engage in champerty.

Furthermore, a stockholder who brings suit against officers and directors today in defense of his and other stockholders' rights cannot readily make a behind the scences settlement. In Federal courts, a proposed settlement must be open, approved by a court, and stockholders are notified before hand of the terms. In New York State, home of the biggest and most important stockholders suits, this procedure is almost invariably the practice if not the rule. This is to prevent private dealing between management, on the one hand, and a particular stockholder or group of shareholders, on the other, at the expense of the majority. States are moving toward judicially approved settlements as a necessary safeguard against Vennerism.

The rule in Pennsylvania is emphatic. An action bought on behalf of a class shall not be dismissed, discontinued, or compromised ... without the approval of the court in which the action is pending.

This protection for the great body of stockholders was implemented in the famous case of Associated Gas & Electric Company vs. Greenberg. Howard C. Hapson, president of A G & E, who later went to jail, had engaged in many practices that would hardly stand the searching examination of an accountant. He became an easy man for a sharpshooting lawyers and stockholders to bring a suit against him and he would buy your stock. And since Associated Gas & Electric securities were dropping steadily in the past 1929 markets, it was profitable for a stockholder who had lost money in A G & E to bring a suit.

Adolph Greenberg and other shareholders settled out of court with Hapson, receiving $9,000 of A G & E funds for stock worth $51.88 in the market. Later, when A G & E went into receivership, the A G & E trustee sued for the difference and finally won in the Court of Appeals in New York. Justice Marian R. Dye held that when a stockholder brings suit in behalf of the corporation and other stockholders, the amount secured is in behalf of and for the account of the corporation. This is so because the action belongs primary to it. The manner and method by which success is accomplished, whether by judgment, settlement with court approval, or by disputation of the parties, make no substantial different. The plaintiff stockholder, in good conscience, should not be allowed to retain the proceeds of a derivative suit discontinued by stipulation.

This is in keeping with the feeling of the SEC Act. Congress provided that officers and directors who realize profits enacting in the company's stock held less than six months are liable to suit in behalf of the corporation, that is, all stockholders. It was also a triumph for ethics. No longer could shareholders hope to bring a suit and, by private settlement, make a profit.

But this was not enough, corporation attorneys argued. There are always lawyers with more time than practice, who will willingly bring suit purely on speculation. If they win, they collect a fat fee from the company. If they lose, they have lost nothing but time, of which they seem to have plenty.

So, New York, Pennsylvania, and other states have passed legislation to make it difficult for lawyers to bring suits on a shoestring. Once, again the legislation favour the large shareholders. As noted, a suing shareholder in New York must be prepared to post a bond to cover court costs and expenses of the defendant unless he owns $50,000 worth, or 5 per cent, of the company's stock. In Pennsylvania, a suing shareholder may be required to post security for costs unless he owns or has joined with him owners of 5 per cent of the company's outstanding stock. Amassing that amount of stock in a company as large as the Pennsylvania Railroad, which 13,167,000 shares outstanding, tantamount to a prohibition. Pennsylvania property laws are notable for their solicitors regard for the rights of large property managers and owners.

The American bar splits into sections on anti-Venner laws. Lawyers for corporations declare they are necessary to stop frivalous suits. They contest, it is relatively easy for any attorney, or group of stockholders, with a genuine cause of action to recruit $50,000 or 5 per cent, of stock in New York. But lawyers who bring "derivative suits" declare it is undemocratic, penalizes the small shareholder, and stops many legitimate suits. Some shareholders are just not in a position to post a bond. California tries to minimize the power of property by permitting a plaintiff to avoid posting a bond if he can demonstrate to a court in a preliminary hearing that he has a reasonable case and that the corporation and stockholders have a reasonable chance of benefit from the suit. (But some lawyers argue that if forces disclosure of their case to the defense before trial.)

These restrictions assumed that the large shareholders will not indulge in a frivalous suit. They impose financial tests on the small shareholder, often the pawn of the lawyers who scents a wrong and will finance court costs, knowing that if he wins he will collect a fee. The small shareholder will seldom, from his own investigation of corporation affairs - reading reports, studying the financial paper of newspaper - discover wrongdoing. Nor are the small shareholders' benefits in winning a suit likely to be sufficient to warrant his being a principal litigant. It is trouble, even if the lawyer does all the work.

Lawsuits, like proxy fights, are primarily the large stockholders' game, or the lawyers' game. You have to be sophisticated to go into them. You have to have a sufficient state to justify the effort. And you cannot hope, as a shareholder, to be directly reimbursed. Your lawyer will get a fee, if you win, paid by the company.

All you get as the suing stockholder is your pro rata share of whatever is collected from officers and directors. And this goes into the corporate pot. You do not get a direct cash benefit unless it is later paid out in dividends.

Thus in proxy fight, as noted in lawsuits, the small stockholder is protected by the large stockholder who is willing to fight. But this happens haphazardly and only when it is in the direct interest of the large shareholder, in a proxy fight, if he wants to take over control of the company, in a lawsuit, if he has a great deal to gain financially, and if he is a lawyer looking for a substantial fee. "Lawsuits and proxy fights out of pure righteousness are rarities."[1]

Relinquish One's Own Stock.--Here is a natural question: If a stockholder is not satisfied with a company's management, why should he start a proxy fight, why should he sue, why shouldn't he just sell his stock and be done with it?

Answer: That is what most stockholders do. It is the easiest, cheapest, and, from many points of view, the most practical way to express stockholder dissatisfaction with a management, a company, or an industry.

The right to sell is a vote - it shows dissatisfaction. And the stock market - Wall Street - is the polling booth. If the price of a stock goes up, it registers stockholder - investor satisfaction. If it goes down, it registers dissatisfaction in the market place.

Sewell L. Avery, as head of Montgomery Ward & Company, got his share of market place votes both ways. "At the suggestion of J. P. Morgan & Co., Avery, a successful Chicago executive and head of U. S. Gypsun Company, accepted the presidencey of Ward's in 1931, a year in which Ward's went $8,700,000 in the red."[2]

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[1]University of Pennsylvania, Corporation and Civil Procedures, (Philadelphia: University of Pennsylvania, Press, 1940), p. 810.

[2]"Battle to Unseat Sewell Avery," Business Week Magazine, Vol. DV (August 27, 1954), p. 30.

In 1939, the company reported a profit of $29,000,000 and its stock registered approval of Avery's performance. From a low of $3\frac{1}{2}$ in 1932, the common climbed to 57 3/4 in 1939. Avery now hailed as a master builder and executive.[1]

But during World War II, Avery lost his constructive touch, and his favor with investors - shareholders. He got into a brawl with the government over labor policy and was bodily carried out of his office in Chicago by two soldiers when the U. S. Army seized the company to stop a strike. Later, he had a series of difficulties with top executives who quit, first in ones and twos, then often by the half dozen.

As a result, Sears Roebuck and Company, Ward's principal rival in the mail-order and chain-store business, made up for ground lost during the thirties. Sear's sales, profits, and dividends expanded faster than Ward's. The Wall Street voting machine duly registered the difference. By 1953, Sears' stock sold higher than Ward's, ever though in 1945 Ward's common was quoted 50% higher than Sears'.

This right to sell stock, to vote for or against a management in the market place is different from a vote at a stockholder's meeting. When a stockholder votes against a slate of directors, he is exercising his right as a stockholder, or an owner. He hopes to change the management and to improve the company. But a stockholder who sells say to hell with it. He is not going to reform the company. He is not an owner trying to exercise the value of his property. He says, in effect, "Include me out."

In one case, the shareholder controls his interest in the company. In the other, he passes on his dissatisfaction to somebody else. The object

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[1] *Ibid.*, p. 32.

is to get out of a stock while the price is still high. In this decision to sell or not to sell, the large stockholder has distinct advantages. He holds many shares. He is listened to by management. He has political influence in the company even though he is not represented on the board of directors.

Thus, just before the Montgomery Ward stockholders' meeting in 1949, Sewell Avery held court. Large shareholders, representatives of banks and investment trusts could see him. Avery tried to impress upon them the wisdom of his policies by unfolding a long-term chart which showed that after the Revolutionary War, the Civil War, and World War I, prices inevitably fell. Avery expected prices to drop again. He was not going to expand during a boom. He was battering down Ward's hatches for a bust.

The point here is not whether Avery was right or wrong, but that he gave large stockholders personal insight into his reasoning. Small shareholders seldom have the benefit of a personal meeting with the chief executive of a major enterprise. They are handled by correspondence - remote control.

On this same point, consider the experience of Russell McPhail. "One day in August, 1953, he dropped into the offices of L. S. Starrett & Company, at Athol, Massachusetts, and indicated to the vice president and the treasurer that he owned 10 per cent or more of the stock. The plush carpet unrolled. Arthur H. Starrett, the president, who was away on vacation, arranged to come back and meet McPhail."[1]

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[1]David Karr, Fight for Control (New York: Ballantine Books, 1956), p. 35.

McPhail had some radical ideas. He wanted the company, which was paying $4.00 a share in dividends annually, to halve the rate. He also felt that he ought to become a member of the board and an officer. Subsequently, he met Starrett and Starrett who invited him to a meeting of the entire board of directors to present his arguments for a change in dividend policy and for his selection to the board.

Can you imagine a holder of ten or one hundred shares receiving such elegant treatment?

McPhail, incidentally, used the same method in introducing himself to officials of Transue & William Forging Company. He was named vice chairman of the board and chairman of the finance committee of Transue & Williams at a salary of $46,000 a year later boasted to $61,000. As a large shareholder, he got a direct voice in management and became the highest paid officers.

The Starrett board did not accept McPhail's views, did not name him to the board of directors, did not give him a top level job. But he got his hearing.

And later, he went to court to demand a stockholder's list so he could communicate with other stockholders. He did not get it. A Massachusetts court decided that he wanted access to the stock transfer books in order to persuade shareholder to sell him their stock or enlist their aid in getting a paid voice in management and not for a proper corporate purpose.

A North Carolina born rebel, domiciled in his spare time in a 56 boat, six-bed boat off Florida and with a candy business in New York City, McPhail was stubbornly undiscouraged. He was firmly determined to make the Massachusetts Yankees treat with him. Periodically, he conferred with

Starrett, the elderly president of the family-run tool enterprise, a man as stubborn as McPhail, and determined not to let a Southerner upstart run his company.

Starrett fathered a ten-year installment plan to sell twenty thousand shares of stock to loyal employees. This was about enough stock to offset McPhail's holdings.

McPhail wanted no part of the plan. The employees' stock might be used against him in a proxy contest. He managed to get hold of a stockholder's list - to fight the plan. When stockholders supported Starrett, McPhail went to court - this time to Federal Court. The plan was unusual. As soon as employees subscribed to shares, they obtained full voting and dividend rights. In most installment purchase arrangements, voting dividend rights either are held in suspense until employees own stock outright on their rights accrue as the stock is paid for.

Under the Starrett plan, if the stock was selling for $60 a share, an employee would have to put up only $6 of his own money in the first year. He could then not only vote the stock in a proxy contest,but also would be entitled to full dividends, which at the recent rates of $3 a year, would yield 50 per cent or his initial investment. The dividends would be applied to the purchase price of the stock. Of course, as the employee's equity in the stock increased, this would be reduced. For the first five years, the plan required an employee to pay 10 per cent a year on the purchase price. But at the end of five years, once an employee had put up 50 per cent of his own money, dividends might be counted as part of his 10 per cent annual payment. Thus, the actual purchase of the stock would not take a full ten years.

The Federal Court held up action on the plan for about two years, notwithstanding the approval of shareholders on three different occasions, first, when the plan was originally submitted and twice when amendments were offered to the proposal. Informally, the Federal judge suggested that the issue might be settled by inviting McPhail to become a member of the board. But Starrett would have no dilution of the Yankee strain in his company. The full board of directors turned down that suggestion in October, 1957.

Ultimately, the plan went through. The court decided that a program to help keep employees become stockholders was normal and proper, but more than that, even if it were designed, as McPhail claimed, to counterbalance his holdings in favor of the incumbent managment, it served the laudable purpose of frustrating a raid by him on the investment of other stockholders.

McPhail later became embroiled with the SEC. He was accused of making a personal profit "exceeding $114,000" by manipulating the assets of the McPhail Candy Corporation on investment trust which he controlled. According to the SEC, he took over from the candy company 16,400 shares of Starrett and 4,000 shares of Transue & Williams at original acquisition cost after these stocks had gone up in price. The SEC settled the case after McPhail made restitution by buying out stockholders of the candy company and dissolving it or on investment trust.

McPhail continued to acquire stock in Starrett company after his SEC trouble, and in 1961 reported ownership of 136,300 shares, or about 21.5 per cent of the outstanding stock. Thus, he continued to be a threat to the Starrett management.

McPhail is a typical stockholder. He is not so much an investor or a contester for power, with the financial resources to pay lawyers to get him what he wants. He has used his stock ownership in Transue & Williams to obtain the highest pay in the company as chairman of the board of directors and chairman of the finance committee. He tried to use similar leverage at Starrett and was resisted. McPhail is not a champion of stockholders in general with a capital C. He has used the rights of stockholders vis-a-vis management. Just the opposite - according to U. S. Court of Appeals Judge Peter Woodbury.

As the longest holder in Starrett, McPhail consoled himself, saying: Everytime Starrett increases the dividend, I can buy more stock. And if he doesn't make money and the stock drops in price, that suits me too. I can accumulate more at lower prices. Stockholders in Transue & Williams could not suffer quite so abstractly when Transue stock was delisted from the New York Stock Exchange and shifted to the less prestigious American Stock Exchange.

Why? Because earnings under McPhail's leadership had dwindled below the New York Stock Exchange's minimum requirements.

McPhails' long tenure at Transue & Williams, notwithstanding his misadventure with the SEC and Judge Woodburg's belittling comment about his managerial desirability, is a commentary on the powerlessness and inertia of stockholders in maxe. When Harold O. Barker, Transue & Williams chairman, bucked McPhail in a proxy contest in 1958, he lost.

It's unfortunate that the SEC action and Judge Woodbury's comments both came two months after the proxy contest was decided. But it's questionable whether earlier disclosure would have made a difference, considering McPhail's continuance in power since. He had the winning votes in his portfolio.

Because they have easy access to the top management, most large stockholders, and particulatly, institutional investors, banks, trust, insurance companies, and pension funds, seldom participate in proxy fights, seldom have representatives make speeches at stockholders' meetings, seldom make proposals in proxies for the consideration of other shareholders.

They achieve their ends through direct consultation. And if they feel that the management is unconstructive or unwilling to listen to their ideas, they sell - they divert themselves of their rights as shareholders - and look around for another investment risk for their money. They act strictly as investors handling other people's money. They do not assume the role of champions of stockholders' rights.

Sometimes small stockholders are afflicted with attachment - loyalty - in their decisions to sell or not to sell. Maybe they have acquired stock through legacy. My husband bought this stock. He had a reason for wanting me to have it. Or maybe the shareholder has held shares for many years and has the attitude: "The stock's treated me well, I'll stick by the company, American Telephone and Telegraph Company, which has come to be known as the 'widows' and 'orphans' stock," has built up a huge following of loyal investors. And it has earned it by its consistent earnings and dividend performance.

An emotional and unbusinesslike approach seldom hampers the large investor - the bank, the investment trust, the pension fund. To the institution, investment is cold, hard, and matter of fact. Is the company doing well? Is the management good? Is the industry prosperous? If these criteria and satisfied, the stock is bought or retained. If not, it is sold.

All investors, once they tear themselves loose from emotions, apply similar criteria in sell or hold decisions. But the large stockholder is in a far better position to make a wise decision than the small investor. Investing is a full-time job for him or his agent. He has a staff which is constantly studying the merits of the individual companies and securities. Still further, the best investment brains among banks and brokerage firms are constantly at the service of the large security holder - individual or institutional - seeking commissions and other business. If anything, the large stockholder is surfected with counsel. He not only must make a choice of securities but a choice of advice in the securities.

The small investor, as observed, is a part-time investor at best. His income from securities relative to total income, is small. His primary economic interest is in his job or profession. Reading annual report or proxy notices is a chore. Communication from management go unopened.

Therefore, his right as a shareholder tend to atrophy, to be unused. He is a victim of his own indifference and innocence. And he cannot count on the sophisticated investor to fight for him and his rights.

When it comes to controlling management, the interest of the great mass of small shareholders is at various with that of the institutional investor who wants only "out" when things look bad. It was no accident that in the New York Central proxy fight investment trusts, insurance companies, pension funds, and other institutions held little stock. Central stock did not possess investment quality. The stock fell to a price low enough for Robert R. Young to buy up a large block of it and fight for control. The market place voted against Central as an investment stock. And in the subsequent proxy contest, the decisive votes were in the market place.

The sophisticated investor takes this view: "Life is too short." If something goes wrong with a company of a management, I will sell. I am not a reformer, a champion of stockholders' rights. There are plenty of stock and companies and industries to choose from. Why tie up money and time in a managerial problem?

And so it is that the market place, the price stock, often is a falling place. If a stock persistently cliches while other stock in the same industry rise; then it is reasonable to conclude that the smart investor - the insiders - are getting out, unloading is the term.... Ultimately, the stock may get low enough for some self-serving knight in financial to buy it up and try to take over, a Robert R. Young, a Louis E. Wolfsen. In serving himself, such a knight serves the stockholders who remained holding and holding and holding.

Thus, the market place vote has power. It is a positive warning, a financial warning, to an incumbent management, of stockholder dissatisfaction has got beyond the discussion stage. The "big boys" are selling. So, the management might bestir itself, make changes to strengthen the company's position. For that reason, selling stock is not an entirely empty gesture. True, the big investors do not fight for a change; they do not stay with the company that is retrogressing. But their leave taking has an effect.

CHAPTER III

THE CHANGING ROLE OF MANAGEMENT

Managements' Role in the Light of Acquisition Techniques

The Nurture of Stockholders.--A corporation is not a lonely hearts society. The president and the other top officers are not chosen for their ability to entertain shareholders. They have risen to five and six-digit salaries and comforting fringe benefits because they have demonstrated a capacity to make money.

Whether by accident, experience, in systematic evaluation, top men in any corporation are likely to allocate their time and energies to:

1. Customers and prospective customers
2. Products including research
3. Workers - good, health industrial relations (human relations)
4. Supplies - especially in a seller's market, when materials are scarce
5. Communities - being a good corporate citizen and an excellent neighbor (corporate image)

Finally comes the stockholder. The executive works for them, but only a small part of his energy is directed in this direction. This does not conform to the myth of "shareholder democracy," in which the shareholder is the boss, the officers his hirelings.

It does not fit the literature that corporation, themselves see fit to disseminate. Thus, the Pacific Gas and Electric Company sends a letter to a former shareholder, saying: "We regret that you have ceased to be a partner in this enterprise." The word "partner," is a euphemism. More correct and straight forward would be: "We regret you ceased to be an investor in the enterprise." But it is part of the tendency to cultivate shareholders - past, present, and future. It comes under the board and all encompassing heading: "Shareholder relations."

Good managements look ahead. When dividends are highest and prospects brightest, trouble may be just around the corner. Trouble to a corporation executive is reduced sales, earnings, and dividends. At that stage, good stockholder relations can be an asset.

The stock will be low, making large-scale accumulation possible. And stockholders will be disgruntled, and, therefore, susceptible to promises. This would be the time for a Wolfson or a Young to launch a fight for Central. Stockholder loyalty to the management would become critical.

The New York Central Railroad fight is illustrative. New York Central had not neglected its shareholders. But it had not cultivated shareholders either. Neither William White, who lost to Young, nor Gustav Metzman, his predecessor, was particularly interested in shareholders. They were railroad men, executives, not politicans. Neither was hail-fellow-well-met, anxious to turn a central shareholder's meeting into a great big party of common owners of a business, nor interested in uniting letter to shareholder. To them, the annual meeting was a chance something to be handled with dispatch.

Central did not send out letters welcoming new shareholders, as many companies did. It did not send out "regret" letters when stockholders sold stock.

Good stockholders relations are useful in three ways.

1. In proxy battle as in the Central case.

2. If the company sells consumer goods and wants its shareholders to be customers and boosts.

3. If it (the company) wants to raise capital - new money.

All companies have relations with shareholders when they send out dividend checks, annual reports, and requests for power. Doing these tasks with finesse, flourish, and schmaltz make stockholders relations in capital letters.

General Electric Company converts stockholder relations into "public relations." G. E. sells refrigerators, washing machines, coffee makers, television sets, electric stoves, oil burner, as well as heavy equipment for power plant. And 375,000 shareholders are worth cultivating. They are upper income people; therefore, likely customers for G. E. household products. Hence, they are molders of consumer attitudes. They will influence others!

Suppose one has just bought a share of G. E. stock. Shortly, he will receive a letter, signed by the president, welcoming him "on becoming a share owner." The letters say that the company "attempts to keep the share owners not merely fully informed, but informed in a way that you will find stimulating and interesting.

Then the new comer is told that the annual meeting, held in Schenectady, New York, the third Tuesday in April, affords an "opportunity" to gain first-hand impression of the company in operation. If you cannot come, the seller informs you that a report of the meeting will be sent to you. Stockholders also receive the annual report, and with each dividend check a special share owner quarterly.

The next to last paragraph of the welcome letter exercises the hope that "you will come to feel that you are indeed a member of the General Electric family, conversant with its problems, proud of its contribution to our national economy, a user and avocate of its products."

A month before the annual meeting a letter addressed "Dear Fellow Shareholder" goes out over the president's signature, "once again I am pleased to invite you to our annual meeting.

A post-meeting report completes General Electrics stockholder relations routine. The covers shows (1) a massive picture of the meeting, cloak full of shareholders, (2) coordinators chatting informally (there is always an informal picture) with one of the company's shareholders, (3) a view of a GE kitchen.

The Scott Paper Company follows a like procedure - with this addition. It mails a package of its products - Scotkins, Cutrite was paper, Scotties, kitchen towels with holder, bathroom towels, and three types of toilet paper --Waldorf, Scott, and Soft Weve -- to new shareholders.

Surveys by A. Weston Smith for the Financial World trail the growth of loving care of corporations for shareholders back to 1951. "In that year, only 12 per cent of one thousand large corporations when Smith questionnaired sent special invitations to shareholders to attend annual meetings."[1] The proportion was 19 per cent in 1964, and 29 per cent in 1956.

The feeling of shareholders has also boomed, but not without the

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[1] A. Weston Smith, "Stockholder Relations," Financial World, Vol. DX (February, 1961), p. 34.

liabilities. James M. Symes lost a large part of his audience at the new Sheraton Hotel in Philadelphia, when he announced that a lunch would be served in a near-by room immediately after the meeting. The shareholders believed in the breadline adage: First come, first served. At a C & O Railway meeting, according to the Wall Street Journal, 80% of the 3,000 shareholders present stampeded for a box lunch and a two hour free boat ride ten minutes before adjournment. Duplan Corporation, which shortly after the war fitted shareholders with large profits and banquets, has eliminated the banquets or non-empathetic with low profits of the fifties. And Stix-Baen & Fuller, St. Louis department store, dispenses with coffee and sweet rolls after some stockholders grambled about the unnecessary expense.

Some stockholders attend meeting with tote bags as evidence of their deep proprietory interest. They take the meeting home with them in the form of schedules and other memoranda, just like citizens at a National Park or on a battleship. They own the place, well, don't they?

A T & T has introduced a new touch. If officers notice that a particular shareholder has been adding to his holdings year after year, a letter signed by the president will be sent thanking him for his confidence in the company. Also trained personnel of the company will visit shareholders, selected pretty much at random, to obtain their views as shareholders. These interviewers are in search of knowledge and are not trying to "sell the company."

The regional meeting was an innovation of General Mills in 1939. If the stockholder could not go the company, the company's officers would go to the stockholder. In 1954, the company held eight such meetings from coast to coast.

Regional meetings are more useful to consumer goods companies than to manufacturers of heavy machinery. They can be utilized as genteel-in-the-family sales whoop-de-doos. Of course, such meetings can serve dual purposes. Executives can talk to distributors, dealers, and large customers as well as shareholders as they travel about.

CHAPTER IV

CONCLUSION

You have often read that this is the land of "peoples capitalism" so many persons are the legal owners of industrial corporations, public utilities, mines, railroads, and banks through possession of shares in major companies. You have read that women are the majority owners of our enterprises-more women own stock than men. And so, we are told never to underestimate the financial power of the female.

But neither, it must be said in a quiet aside, should we overestimate women. Men run our corporations and not too many men, at that. They are the chairman of the boards and the presidents and the vice presidents. They control and manipulate the wealth. They are the husbands, or the brothers, or sons who buy, sell, and send in the proxies, for stock in their wives', sisters', or mothers' names. They are the trustees at banks who administer the estates of widows and orphans. They are the experts in investment banking counsel firms and in the brokerage offices who suggest to widows and single women how to manage their securities. The fiction that women control most of the wealth of America is chivalrous and useful. It makes women feel important and it serves the ends of men.

I have endeavored to go behind The Folklore of Capitalism, to use the title of Thurman Arnold's penetrating book. It examined the stockholder as a reality and not as a New York Stock Exchange slogan. Adolf A. Berle, Jr.

a lawyer, and Gardiner C. Means, an economist, tore away the folklore of corporate ownership in the Modern Corporation and Private Property. They pointed out how great aggregates of men, machinery, materials, and money had been "captured" by a few controlling officers and directors of corporations. They wrote:

> It is precisely this separation of control from ownership which makes possible tremendous aggregations of property. The Fords and the Mellons, whose personal wealth is sufficient to finance great enterprises, are so few, that they only emphasize the dependence of the large enterprise on the wealth of the many. The quasi-public corporation commands its supply from ... the 'investing public.'[1]

Berle and Means documented the separation of control and legal ownership statistically and examined its sociological implications. After Berle and Means, James Burnham published The Managerial Revolution, in which he developed the theory of a new ruling class the managers, the industrialist, who have a "special degree of control over -- the instruments of production," and, thereby, obtain power and preference in our social order.

The managers of corporations control the proxy machinery, the ballot, even as a politician dominates a ward, a county, or a city. Stockholders plainly return the directors and presidents to office year after year for their good deed the payment of dividends. These managers molligy their personal and psychic needs with excellent salaries, nice bonuses, stock options, and liberal expense accounts. They have perfected financial devices to defeat graduates income taxes, as befits the corporate elite, a managerial class. Further, through their control of men, machinery, materials, and money the corporate organization these managers exert great power in American

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[1]Adolf A. Berle and Gardiner C. Means, The Modern Corporation and Private Property (New York: The Macmillan Company, 1932), p. 5.

affairs -- politics, society, and business.

The stockholder gets the last bite on the apple core. Executives, in administering the affairs of the company, look to the perpetuation of the enterprise. They are more immediately concerned with maintaining "sound relationships" with customers, suppliers, workers, the government and community than with shareholders whom they dangle on proxy strings. And so, it becomes insistently important for those whom investing is a business - the institutional investor, the professionals - to see that officers and directors do not, in their zeal to perpetuate the corporation as an institution, slight the shareholders financially, and more significantly, morally.

Today the corporation has an identity distinct from its owners. I can offer no stronger evidence than Peter Drucker's book the Concept of the Corporation. For his book, Drucker used General Motors as the very model of a major corporation.

Yet, the word "dividend" is not in the index. Nor, for that matter is the word "stockholder." But you will find "worker," "Labor unions," "taxation," "public relations," "consumer." You find a reference to "profit, division of," and behold, it relates to the division of "gains from increased efficiency between wages and profits." Worry about the stockholder? Hardly. The persnickety problem is how much to let the union have; how much to keep for the corporation.

This is by no means a criticism of Drucker. He was defining, analyzing, characterizing the corporation as it is ... and as he found it. He was dealing with priorities ... realities. In the social reality the corporation is permanent and the shareholder is transitory.

Where, then, does this leave the shareholder? Frank W. Abrams, former chairman of Standard Oil (New Jersey), says corporations can achieve their greatest social usefulness when management succeeds in finding harmonious balance among the claims of the stockholders, employees, customers, and public at large. But management's responsibility, in the broadest sense (is to be) a good citizen.

A good citizen. The corporation now has a new identity apart from that of profit making, apart from its charter, by-laws, and legal trappings, apart from its shareholders. A Good Citizen, Inc. and the corporation executives comports himself to reflect that corporate citizenship. He wears his church clothes every day, not just on Sundays. In his paneled office, in his travels about the country, in his community relations, he represents, not himself, but the Corporation.

The shareholder is the residuary beneficiary of Good Citizen, Inc., and this gives rise to two-toned morality-one set of morals with which executives, corporations, greet the outside world, and another set of morals with which they treat shareholders. After all, the shareholders are transitory!

The modern corporation is an island of power, a financial stronghold. Ambitious, wealth-minded men compete for top jobs in these economic fortress. Sometimes this competition for power emerges as a proxy fight, which offers shareholders a chance to take sides. Sometimes a purposeful stockholder, sensing some overreaching, some dishonesty, will sue. And sometimes, the SEC may intervene - call a manager to account for violation of the law on custom; suspended careless or misguided C.P.A.'s from practicing before it.

Historically out of the common law in Great Britain the stockholder has always had a bundle of rights, of protection from thievery, dishonesty, and double-dealing. But the hundle was tied together with rubber hands which could be skillfully stretched by ingenious executive and distinguished lawyers.

The 1933 Securities Act required issues of stocks and bonds to tell the truth. It was followed by the SEC Act of 1934, the Public Utility Holding Company Act of 1934, and laws on investment companies, investment advisers, and the re-organization of companies in bankruptcy. The SEC became the policeman of Wall Street. It determined the adequacy of information, rejected ambiguous statements, and denied sellers of securities the privilege of rosy futuristic forecast. The SEC formulated rules to help the stockholder help himself, and so fathered the new phrase, "corporate democracy."

"In its own way, the phrase is as misleading as people's democracy." It suggests a militancy among shareholder that does not exist.[1] It implies that the shareholder exercises his legal power, and defends his own right. A few shareholders -- the large ones or let us say the aggressive ones -- do. But for the most part shareholders are scattered, unorganized, and indifferent. The managers are free to act quickly and discreetly, without benefit of town meeting. This suggest that ours is a plutocratic corporate system.

Corporate democracy differs from political democracy. In a public election to buy votes is a crime. In a proxy fight, plutocratic vote-getting not only is legitimate but frequently is necessary to win a key control.

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[1] Frank D. Emerson and Franklin C. Hatcham, Shareholder Democracy (Cleveland, Ohio: Western Reserve University Press, 1954), p. 108.

The SEC keeps their corporate plutocracy under control through rules and regulations. The accountants, lawyers, corporate controllers, and secretaries, and investment bankers and brokers who constantly lay bare their financial lives before the SEC create a framework, on environment of rightness. An outside convenience has become part of Wall Street in that Wall Street has developed a new conscience of its own. Because of the penalties attached to misbehavior, corporate officials have become solicitors of the right of stockholders. Thus, the mass of stockholders has become an institution force in America and not of what the individual stockholder does in his own behalf, but because of what others do for him as a class.

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